

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING TITLE INSURANCE BUSINESS

DOCKET NO. 18-0156-0601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapters 2 and 27, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule increases dollar limitations for expenditures by title insurance industry members on donations, promotional advertising, and business entertainment involving producers of title insurance business. The adjustments reflect changes in prices in the more than 12 years since the amounts were last set. Additional changes to the rule are made to clarify participation in trade association events and to conform to the Office of Administrative Rules style and formatting rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were made in consultation with representatives of the affected industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dale Freeman at (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 28th day of June, 2006.

Shad Priest, Acting Director
Idaho Department of Insurance
700 West State St., 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0156-0601

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.56, "Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules." ()

02. Application of Rule. The provisions of this Rule shall apply to all title insurers and title insurance agents. This Rule does not limit the Director's authority to determine that other title insurance trade practices constitute violations of Idaho Code Sections 41-2708(3) and 41-1314. ()

03. Purpose. The purpose of this Rule is to define certain fair trade practice standards for title insurance, the violation of which will constitute rebates and/or illegal inducements prohibited by Idaho Code, Sections 41-2708(3) and 41-1314. The Department of Insurance regulates the title insurance industry. It does not regulate producers of title business. Rule 18.01.56, "Rebates and Illegal Inducements to Obtaining Title Insurance Business," will interpret the anti-rebate and anti-illegal inducement statutes as applicable to the title insurance industry. This Rule has been thoroughly researched and is based in part on the rules of Idaho's neighbor states. In addition, written and oral comments and recommendations about the rule as well as testimony provided at five hearings conducted across the state have been carefully reviewed and have contributed to the provisions of IDAPA 18.01.56, "Rebates and Illegal Inducements to Obtaining Title Insurance Business". This Rule is intended to interpret broad anti-rebate and anti-illegal inducement statutes. The Rule was drafted after representatives of the title industry and producers of title business industries advised the Department that there was an accumulation of past and present abuses that had previously gone unreported. These entities asked the Department to step in and help rectify the situation and suggested in part that the establishment of guidelines as to what is an inducement and what is an illegal inducement would help stop past and present abuses and curtail future abuses. The guidelines can be referred to in the title entity's day to day business in interpreting what is an inducement and what is an illegal inducement. This guideline will also help the Department in its efforts to enforce the anti-rebate and anti-illegal inducement statutes. At no time has the Department of Insurance or its representatives stated that the standard practice of the title industry is to give collateral benefits and that the standard practice of the industries of producers of title business are to receive collateral benefits. The Department of Insurance recognizes as an undisputed fact that a producer of title business in most instances is involved with the consumer in assisting the consumer in the selection of a title company for title insurance services. The Department of Insurance also recognizes that abuses in the intricacies of this selection have occurred and do occur, and the occurrence of abuses is specifically acknowledged by the title industry and the Idaho Land Title Association. The Department of Insurance has taken and will continue to take action to reported violations. The Department's goal is to assure that the selection of a title company is made on the basis of the title company's ability to provide economy, promptness, accuracy and efficiency in its service. The elimination of "collateral benefits" with the interpretive guidance of IDAPA 18.01.56, "Rebates and Illegal Inducements to Obtaining Title Insurance Business," will help in accomplishing this goal -- a goal that establishes a uniform set of rules for all title entities and which ultimately benefits the consumer. (7-1-93)()

~~002. — 003. (RESERVED).~~

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(1v), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying in accordance with the public records act. ()

003. ADMINISTRATIVE APPEALS.
All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". ()

004. APPLICABILITY INCORPORATION BY REFERENCE.
The provisions of this Rule shall apply to all title insurers and title insurance agents. This Rule does not limit the Director's authority to determine that other title insurance trade practices constitute violations of Idaho Code, Sections 41-2708(3) and 41-1314. No documents have been incorporated by reference into these rules. (7-1-93)()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB ADDRESS.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. ()

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORD COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

00510. DEFINITIONS.

01. Business of Title Insurance. "Business of title insurance" has the meaning set forth in Idaho Code, Section 41-2704 and includes in addition thereto, the performance in this state by a title entity of any service in conjunction with the issuance of any contract or policy of title insurance. (7-1-93)

02. Person. "Person" includes any natural person and any firm, association, organization, partnership, business trust, corporation or other legal entity. (7-1-93)

03. Producer of Title Business. "Producer of title business" includes any person engaged in this state in the trade, business, occupation or profession of: (7-1-93)

a. Buying or selling interest in real property; or (7-1-93)

b. Making loans secured by interest in real property; and (7-1-93)

c. Shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, subdividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing. (7-1-93)

04. Self Promotional. "Self promotional" refers to either a promotional function which is conducted by a single entity or a promotional item intended for distribution by a single entity. All benefits from the promotional function or item must accrue to the entity promoting itself. (7-1-93)

05. Things of Value. "Things of value" means anything that has a monetary value and includes, but is not limited to, tangible objects, services, use of facilities, monetary advances, extension of lines of credit, creation of compensating balances, uncollected cancellation fees for issuance of title commitments, and all other forms of consideration. (7-1-93)

06. Trade Association. "Trade association" means an association of persons, a majority of whom are producers of title business, or persons whose primary activity involves real property. (7-1-93)

07. Title Entity. "Title entity" includes both title insurance agents and title insurers and their employees, agents, or representatives. (7-1-93)

~~006. -- 010. (RESERVED).~~

011. PROHIBITED THINGS OF VALUE.

A title entity shall not provide things of value to a producer of title business, consumer or member of the general public except as permitted in Sections 012, 013, 014, and 015 of this ~~rule~~ chapter. If a providing of things of value

does not clearly fit into the above four Rules, then it is a prohibited act. Exhibit 1, attached hereto, is a partial, but not all -inclusive, list of acts and practices which are considered illegal inducements prohibited by Title 41, Idaho Code (the Idaho Insurance Code). (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

013. PERMITTED ADVERTISING WITH TRADE ASSOCIATIONS.

01. Advertisements. No advertisement may be placed in a publication that is published or distributed by, or on behalf of, a producer of title business. Advertising in a trade association publication is only permitted if the publication is an official publication of the trade association with at least regular quarterly publications. The publications must be nonexclusive (any title entity must have an equal opportunity to advertise in the publication and at a standard rate). The title entity's ad must be purely self-promotional. (4-26-95)

02. Donations. A title entity is permitted to donate time to serve on a trade association committee and may also serve as an officer or director for the trade association. A title entity may also donate, contribute or otherwise sponsor a trade association event if the event is a recognized association event that generally benefits all members and affiliated members in an equal manner. The donation cannot benefit selected producer of title business members of the association unless through random process. Solicitation for the donation must be made of all members and affiliated members in an equal manner. Donations are per agent license or insurer and are limited to a cumulative donation value of two thousand dollars (\$2,000) or equivalent things of value collectively to all trade associations per year. In addition, a title entity is allowed to participate in or attend trade association events as long as the title entity pays a fee commensurate with fees paid by other participants in the events. These events include, but are not limited to, conventions, award banquets, symposiums, breakfasts, lunches, dinners, open houses, sporting activities and all other similar activities. (4-26-95)(____)

014. PERMITTED SELF-PROMOTIONAL ADVERTISING.

01. Self-Promotional Items. A title entity may distribute self-promotional items having an acquisition value of less than ~~five ten~~ dollars (\$~~5~~10) to producers of title business, consumers, and members of the general public. These self-promotional items are limited to novelty gifts, advertising novelties, and generic business forms and specifically do not include food or beverages. ~~A generic business form is a title insurance or escrow related form of common usage. This form shall not contain the name of a producer of title business. A title entity shall only distribute novelty gifts, advertising novelties, or generic business forms in the regular course of business. Distribution may be by hand or by regular messenger service and may be mailed if the recipient is out of the title entity's county.~~ A recipient of a novelty gift or advertising novelty shall not receive gifts or advertising novelties in excess of ~~five ten~~ dollars (\$~~5~~10) of cumulative value per month and no more than fifty dollars (\$50) of cumulative value of gifts or advertising novelties per year. ~~A recipient of generic business forms shall not receive more than fifty (50) business forms per month and no more than twenty five dollars (\$25) of cumulative value of forms per year.~~ A title entity shall also not give novelty gifts, advertising novelties or generic business forms to producers of title business, consumers, members of the general public, or trade associations for redistribution by these entities. (4-26-95)(____)

02. Self-Promotional Functions. Self-promotional functions ~~are only permitted on the premises of the title entity, and~~ are limited to the following ~~three two~~ (32) types of functions: (4-26-95)(____)

a. Educational programs - a title entity is permitted to conduct educational programs. ~~The instructor for the educational program must be a full-time employee of the title entity. The education programs are limited to education solely regarding title and escrow.~~ A title entity is permitted to expend no more than ~~two ten~~ dollars (\$210) per person at an educational program. For purposes of determining the maximum permitted expenditure, all costs associated with the delivery of the educational program shall be considered, including but not limited to, costs paid by the entity for travel, refreshments, instructor or speaking fees and facility rental. A title entity may participate in or make presentations at educational programs which are conducted or presented by other entities. The title entity is not permitted to expend any money to sponsor or cosponsor these programs, unless the educational program is a trade association event in which case Subsection 013.02 of this chapter will apply. (4-26-95)(____)

~~b. Self-promotional programs — a title entity is permitted to conduct self-promotional programs only for title insurance or escrow related matters. A title entity must not expend more than two dollars (\$2) per person at a self-promotional program. (4-26-95)~~

eb. Open houses - a title entity is permitted to have two (2) open houses per year. An open house shall be a self-promotional function at the title entity's owned or occupied facility (~~i.e.-g.~~ a Christmas party or any party, an open house for remodeling of its facility, an open house for a new building to become the title entity's facility). It shall be nonexclusive (an open invitation to all producers of title business is required). A title entity must not expend more than ~~seven fifteen~~ dollars ~~and fifty cents~~ (\$7.5015) per guest per open house. A title entity cannot combine permitted expenditures for two (2) open houses to be used for one (1) open house. A title entity also cannot accumulate left over or unused expenditures from one (1) open house and use those expenditures for a second open house. (4-26-95)(____)

015. PERMITTED BUSINESS ENTERTAINMENT.

A title entity may entertain a producer of title business ~~in a single day with a choice of~~ meals and/or ~~events not to~~ entertainment functions provided the expenditure per person entertained does not exceed fifty one hundred dollars (\$5100) ~~expense~~ per individual per day according to the following guidelines: (4-26-95)(____)

01. Meals and Events. A title entity ~~may entertain no more than four (4) persons from an office of one (1) producer of title business in a single day. This entertainment function may take place on or off the title entity's premises, but is restricted to one (1) meal per day for each of the four (4) persons from one (1) office. Business meals shall include all meals and/or drinks, including but not limited to breakfast, brunch, lunch, dinner, cocktails. A title entity shall not expend more than fifty dollars (\$50) per person for a meal. Also, no more than ten dollars (\$10) total transportation cost from the client's place of business shall be expended. It must be emphasized that no more than four (4) persons from an office of one (1) producer of title business can be entertained by a title entity in any one (1) day and only for a choice of one (1) business meal shall not expend more than one hundred dollars (\$100) per person per day for all meals and/or events. Meals and events shall include, but not be limited to, breakfast, brunch, lunch, dinner, cocktails, sporting events, sporting activities, trips and music and art events. These meals or events may occur on or off the title entity's premises. In addition, a title entity may entertain no more than four (4) persons who are employed by or agents of any single producer of title business in a single day. Spouses and/or guests of the producers of title business or employees or agents thereof shall be included in the count for purposes of determining the four (4) person maximum. In addition, a person may not be entertained by a title entity more than three (3) days during any ten (10) day period of time. For purposes of determining the maximum permitted expenditure, all costs associated with any meals or events shall be considered. This shall include, but not be limited to, costs paid by the title entity for travel, transportation, hotel, equipment or facility rental, meals, cocktails, refreshments, registration or entry fees and event tickets. Entertainment permitted under this rule may not be conditional upon or compensation for forwarding or directing title business to the title entity.~~ (4-26-95)(____)

02. Events. A title entity ~~may entertain no more than four (4) persons from an office of any producer of title business in a single day. This entertainment function may take place on or off the title entity's premises, but is restricted to one (1) event per day for each of the four (4) persons from one (1) office. An event shall include, but not be limited to, sporting events, sporting activities, and music and art events. The dollar limitation on event expenditures is limited to the admission price or fee to participate in the event, but shall not exceed fifty dollars (\$50) per person. Also, no more than ten dollars (\$10) total transportation costs from the client's place of business shall be expended. It must be emphasized that no more than four (4) persons from an office of one (1) producer of title business can be entertained by a title entity in any one (1) day and only for a choice of one event.~~ (4-26-95)

(BREAK IN CONTINUITY OF SECTIONS)

018. PENALTY.

This Section shall emphasize and restate the general penalties authorized pursuant to Title 41, Idaho Code, (the Idaho Insurance Code) for violations of the anti-rebate and anti-illegal inducement laws. (7-1-93)

01. Section 41-2708(3), Idaho Code. Section 41-2708(3) provides that each person and entity giving or receiving a rebate, illegal inducement, or a reduction in rate shall be liable for three (3) times the amount of such

rebate, illegal inducement, or reduced rate. In addition to this penalty, a title entity may also be subject to an administrative penalty as outlined below. (7-1-93)

02. Section 41-327, Idaho Code. Section 41-327 provides that the Director may impose an administrative penalty not to exceed five thousand dollars (\$5,000) and/or suspend or revoke an insurer's certificate of authority if the Director finds, after a hearing thereon, that the insurer has either violated or failed to comply with the Insurance Code. (7-1-93)

03. Section 41-1077~~16~~, Idaho Code. Section 41-1077~~16~~ provides that the Director may impose an administrative penalty not to exceed one thousand dollars (\$1,000) and/or suspend or revoke an agent's license if the Director finds, after a hearing thereon, that the agent has either violated or failed to comply with the Insurance Code. (~~7-1-93~~)()

EXHIBIT 1

A title entity shall not provide things of value except as provided in Sections 012, 013, 014, and 015 of this rule. The following is a partial, but not all inclusive, list of acts and practices which are considered illegal inducements prohibited by the Idaho Insurance Code:

1. A title entity shall not sponsor any activity off its premises unless the producer of title business bears the entire cost of the activity. A title entity shall not cosponsor, subsidize, contribute fees, prizes, gifts, or otherwise provide things of value for a promotional function off the title entity's premises regardless whether the function is self-promotional or not. Off premises functions/activities include, but are not limited to, meetings, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, or related activities of producers of title business, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, motor vehicle rallies, sporting events of all kinds, gambling trips, hunting trips or outings, golf tournaments, artistic performances, and outings in recreation areas or entertainment areas. It shall be the burden of the title entity to be prepared to present documentation to the Department of Insurance that no things of value were provided.

2. A title entity shall not sponsor, subsidize, supply prizes or labor, or otherwise provide things of value for promotional activities of producers of title business. This does not prevent a title entity from attending activities of producers of title business if there is no cost to the title entity other than the title entity's own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to producers of title business.

3. A title entity shall not provide or offer to provide, either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any such person, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.

4. A title entity shall not pay or offer to pay, either directly or indirectly, with respect to any producer of title business for:

a. The services of an outside professional whose services are required by any producer of title business to complete or structure a particular transaction;

b. The salary of an employee of such producer of title business;

c. The salary or any part of the salary of a relative of any producer of title business employed by a title entity, if the payment is in excess of the reasonable value of the work actually performed;

d. A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;

e. Services required to be performed by any producer of title business in his or her professional capacity (e. g. the drafting of documents that are required to be filed by such producer of title business with the title entity for the initiation of closing and settlement services);

f. Any evidence of title or a copy of the contents thereof which is not produced or issued by the title entity, if the evidence or the title relates to a current transaction;

g. The rent for all or any part of the space occupied by any producer of title business;

h. Money, prizes, or other things of value in any kind of a contest or promotional endeavor;

i. Any advertising effort made in the name of, for, or on behalf of any producer of title business;

j. Any business form of any such producer of title business other than a form regularly used in the conduct of the title entity's business, which form is furnished solely for the convenience of the title entity and does not constitute a benefit to the producer of title business; or

k. Any salary, commission, or any other consideration to any employee who is at the same time actively engaged as a real estate licensee in the real property or mortgage brokerage business or is actively engaged in any other business of a producer of title business; or

l. The cancellation fee, the fee for the preliminary title report or other fee on behalf of any producer of title business before or after inducing such producer of title business to cancel an order with another title entity.

5. A title entity shall not furnish, or offer to furnish, all or any part of the time or productive effort of any employee of the title entity (example: office manager, escrow officer, secretary, clerk, messenger, etc.) to any producer of title business. This provision is not intended to effect the title entity's day to day business with producers of title business. It is directed at title entity employees being utilized by, or "loaned" out to a producer of title business for the self-promotional interests of the producer of title business.

6. A title entity shall not furnish, or offer to furnish, pay for, or offer to pay for, furniture, office supplies including file folders, telephones, equipment, or automobiles to any producer of title business, or pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of the aforementioned items.

7. A title entity shall not provide, or offer to provide, non title services (example: computerized bookkeeping, forms management, computer programming, trust accounting) or any similar benefit to a producer of title business, without charging for and receiving a fee commensurate for services provided (e. g. a fee for trust accounting shall be a like fee charged by state or federally chartered banks or savings and loan associations in the local area). This provision also does not prevent title entities from contracting with trade associations to provide non-title services for a profit (i.e. MLS services).

8. A title entity shall not provide gifts or other things of value in excess of fifty dollars (\$50) per year per individual in connection with congratulations or condolences to a producer of title business. ~~A letter or card in these instances will not be interpreted as providing a thing of value.~~

9. A title entity shall not waive a cancellation fee, fail to charge for a cancellation fee, or otherwise fail to make efforts to collect a cancellation fee from the recipient of services provided by the title entity.

10. A title entity shall not furnish any part of its facility (e. g. conference rooms, meeting rooms, etc.) to a producer of title business or trade association without receiving a fair rental charge commensurate with the average rental for similar facilities in the area.

11. A title entity shall not furnish reports containing publicly recorded information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property (other than as permitted in Section 012) helpful to any producer of title business, consumer, or member of the general public without making a charge that is commensurate with the actual cost of the work performed and the material furnished (e. g. "farm packages", lot book reports, tax information, title commitments).

12. Delivery service between a title entity and a producer of title business shall be conducted by the title entity's regular messenger service and shall only involve the delivery of items from a title entity to a producer of title business or from a producer of title business to a title entity.